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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,445	06/15/2000	Beth N. Grijalva	GRIJ-0002-US	8014

7590 05/22/2002

Fred G Pruner Jr  
Trop Pruner & Hu PC  
8554 Katy Freeway Suite 100  
Houston, TX 77024

EXAMINER

HAMILTON, LALITA M

ART UNIT PAPER NUMBER

3764

DATE MAILED: 05/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/594,445

Applicant(s)

GRIJALVA, BETH N.

Examiner

Lalita M Hamilton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1)  Responsive to communication(s) filed on appeal brief filed on January 29, 2002.
- 2a)  This action is **FINAL**.                      2b)  This action is non-final.
- 3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4)  Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5)  Claim(s) \_\_\_\_\_ is/are allowed.
- 6)  Claim(s) 1-45 is/are rejected.
- 7)  Claim(s) \_\_\_\_\_ is/are objected to.
- 8)  Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9)  The specification is objected to by the Examiner.
- 10)  The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved.
- 12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a)  All b)  Some \* c)  None of:
1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14)  Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

- 15)  Notice of References Cited (PTO-892)                      18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)                      19)  Notice of Informal Patent Application (PTO-152)
- 17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      20)  Other: \_\_\_\_\_

## DETAILED ACTION

### Summary

In response to the Appeal Brief filed on January 29, 2002, the Examiner is hereby withdrawing the final rejection.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-3, 14, 31, and 33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 2-3 and 14, the eyeglass frames and the bridge were not positively recited in claim 1. In claims 31 and 33, the eyeglass frames were not positively recited in claim 30.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11, 13-25, 27-41, and 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Heaford ('077).

Heaford discloses a flexible body formed of a pliable material and adapted to partially extend over the lens and along side the side arm (col.1, lines 45-55) and (7), first and second fasteners (12), eyeglass frames, a lens socket, (col.2, lines 70-95), a

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first fastener comprising a loop having first and second ends (12) (second end may be interpreted as being a pronged tab), a releasable connector (17), and a body having at least one slot (10). The method of intended use is not given patentable weight in the article claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12, 26, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heaford in view of Grindle ('401).

Heaford discloses the invention substantially as claimed; however, Heaford does not disclose a fabric material or a fastener comprising a tab that is separate from the body. Grindle teaches a lens occluder comprising a fabric material and attaching means (col.3, lines 35-40). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the fabric material taught by Grindle as an alternative material for the occluder. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the tab separate from the body and incorporate that in place of the attachment means disclosed Heaford, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179.

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**Conclusion**

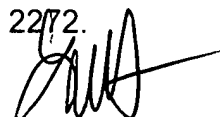
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mosher ('524), Hamilton ('372), Kobashikawa ('952), Blumenthal ('573), Gilkerson ('548), and Shindel ('195) teach eye glass covers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lalita M Hamilton whose telephone number is (703) 306-5715. The examiner can normally be reached on Tuesday-Thursday (8:30-4:30).

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 306-4520 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-

2272.

  
LMH



May 20, 2002

